

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>PAUL R. TERREL</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>OAKLAWN IMPROVEMENT DISTRICT</b>	)	
Respondent	)	Docket No. 1,043,878
	)	
AND	)	
	)	
<b>TRAVELERS INDEMNITY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requests review of the February 20, 2009 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

The Administrative Law Judge (ALJ) found that the claimant voluntarily terminated his employment with respondent and denied his request for temporary total disability (TTD).<sup>1</sup>

Claimant requests review of the ALJ's decision to deny TTD benefits. He argues that respondent had no light duty jobs available to him and that the medications he is required to take (as a result of his compensable accident) render him unable to perform the physical manual labor he is regularly expected to do while working.

Respondent argues that the Board has no jurisdiction over this issue and should dismiss the claimant's appeal.

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<sup>1</sup> Medical treatment was also ordered but is not the subject of this appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the undersigned Board Member finds that the claimant's appeal should be dismissed for lack of jurisdiction.

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review only those issues listed in K.S.A. 44-534a(a)(2). Those are (1) whether the worker sustained an accidental injury, (2) whether the injury arose out of and in the course of employment (3) whether the worker provided timely notice and timely written claim, and (4) whether certain other defenses apply. The term "certain defenses" refers to defenses which dispute the compensability of the injury under the Workers Compensation Act.<sup>2</sup> The Board can also review those decisions when a party alleges the ALJ exceeded his jurisdiction.<sup>3</sup>

The issue of whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>4</sup>

The ALJ has the jurisdiction and authority to grant or deny temporary total disability benefits at a preliminary hearing. Accordingly, the ALJ did not exceed his jurisdiction and the Board does not have jurisdiction to address this issue at this juncture of the proceedings. Claimant's appeal is therefore dismissed.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.<sup>5</sup> Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

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<sup>2</sup> *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>3</sup> K.S.A. 2008 Supp. 44-551(i)(2)(A).

<sup>4</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 303 and 304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

<sup>5</sup> K.S.A. 44-534a.

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the claimant's appeal of the Order of Administrative Law Judge John D. Clark dated February 20, 2009, is dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April 2009.

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JULIE A.N. SAMPLE  
BOARD MEMBER

c: James B. Zongker, Attorney for Claimant  
William L. Townsley & Sylvia B. Penner, Attorneys for Resp. and its Ins. Carrier  
John D. Clark, Administrative Law Judge